



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Executone Information Systems, Inc.

File: B-246155

Date: October 21, 1991

Savannah Robinson, Esq., Whittle, Cox & Robinson, for the protester,
Henry J. Gorczykcki, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where bidder has submitted only a facsimile copy of a bid bond as of the time of bid opening, the bid bond is of questionable enforceability and the bid is properly rejected as nonresponsive; since responsiveness cannot be established after bid opening, the defect in the bond cannot be cured by the bidder's submission of the original bid bond subsequent to bid opening.

DECISION

Executone Information Systems, Inc. protests the rejection of its low bid under invitation for bids No. N62467-90-B-9038, issued by the Department of the Navy for repair and upgrade of a nurse call system at Naval Air Station, Corpus Christi, Texas. The Navy rejected Executone's bid as nonresponsive because Executone submitted only a facsimile copy of the required bid bond with its bid.

We dismiss the protest.

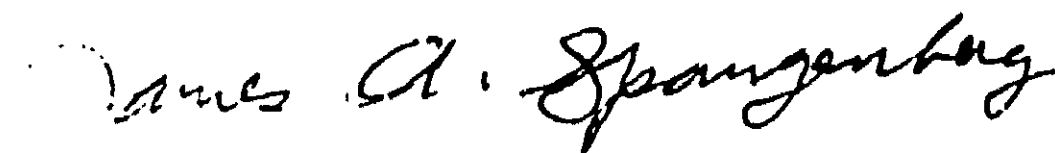
Executone submitted a facsimile copy of the original bid bond with its bid documents. After bid opening, Executone submitted the original bid bond document. It asserts that the submission of the original bid bond should have cured any defect arising from its failure to submit the original document prior to bid opening.

The determinative issue concerning the acceptability of a bid bond is whether, in the event of a default by the bidder, the contracting agency could be certain that the surety would be bound, based on the information in the possession of the contracting agency at the time of bid

opening. J T Roofing, Inc., B-245823, Oct. 8, 1991, 91-2 CPD ¶ ____; G & A General Contractors, B-236181, Oct. 4, 1989, 89-2 CPD ¶ 308. The agency cannot determine definitely from a facsimile copy of the bid bond that the surety would be bound because there is no way it can be certain from examining the copy that there had not been alterations to which the surety had not consented. Id. This deficiency cannot be cured by submitting the original bond documents after bid opening because this would essentially provide the bidder with the option of accepting or rejecting the award by either correcting or not correcting the bond deficiency. Id.

Since Executone's submission of a facsimile copy of the bid bond raises a question of bond enforceability that can be resolved only by reference to the original documents after bid opening, the Navy properly rejected Executone's bid as nonresponsive. Although acceptance of Executone's bid may result in a monetary savings to the government on this procurement, the maintenance of the integrity of the competitive bidding system is more in the government's best interest than the pecuniary advantage to be gained in a particular case. A. D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel